

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 23-mc-80743-Middlebrooks-Matthewman

IN RE APPLICATION OF
ORTHOGEN INTERNATIONAL GmbH,

Petitioner,

For an order pursuant to 28 U.S.C. § 1782
to conduct discovery for us in a foreign proceeding(s)

-----X

**PROPOSED INTERVENOR DOUGLAS SCHOTTENSTEIN, M.D. AND
SCHOTTENSTEIN PAIN AND NEURO, PLLC D/B/A/ NY SPINE’S RESPONSE TO
THE MOTION TO TRANSFER THESE PROCEEDINGS TO THE SOUTHERN
DISTRICT OF NEW YORK**

Douglas Schottenstein, M.D. and Schottenstein Pain and Neuro, PLLC d/b/a/ NY Spine (“intervenor”) through their attorneys, The Law Offices of Cory H. Morris, Cory H. Morris, P.C., an attorney duly admitted to practice in New York and Florida Courts respectfully state:

1. I am attorney of record for Douglas Schottenstein, M.D. and Schottenstein Pain and Neuro, PLLC d/b/a/ NY Spine who are the potential (or actual) defendants in a German Proceeding that is/are the object of petitioner’s 28 U.S.C. § 1782 application in the instant case.

2. Douglas Schottenstein, M.D. and Schottenstein Pain and Neuro, PLLC d/b/a/ NY Spine (“Intervenors”) do not oppose the previous application filed to transfer the proceeding to the Southern District of New York to, *inter alia*, conserve judicial resources and avoid inconsistent determinations across the United States District Courts.

Fairness and Judicial Economy will be Promoted if all of these Matters are heard in the Southern District of New York

3. Petitioner bases this case on Intervenors filing in *Schottenstein et al v. Capla et al*, 22-cv-10883-PKC (S.D.N.Y.) where all parties to Petitioner’s application are named Defendant.

4. As stated in Petitioner's Memorandum of Law in Support of the Ex Parte Application for an Order Pursuant to 28 U.S.C. § 1782 [D.E. 3] (hereinafter "Orthogen MOL"), Orthogen plans to file suit in Germany based on the underpayment of royalties from Edward Capla and Douglas Schottenstein, M.D. (Schottenstein Pain and Neuro, PLLC d/b/a/ NY Spine). See. D.E., P. 1.

5. Schottenstein Pain and Neuro, PLLC d/b/a/ NY Spine is the corporate entity through with Dr. Schottenstein operated his medical practice for the Regenokine license agreements entered into with Petitioner, Orthogen International GmbH (hereinafter "Orthogen") that are discussed at length in the Orthogen MOL in support of its Ex Parte Application for an Order pursuant to 28 U.S.C. § 1782.

Petitioners will be able to obtain the same discovery from the same parties in *Schottenstein et al v. Capla et al*, 22-cv-10883-PKC (S.D.N.Y.)

6. As set out in the Memorandum of Law in Support of Ex Parte Application for a Discovery Order Pursuant to 28 U.S.C. § 1782 [DE 3] at page 3, the purpose of the subpoenas served on Deponents is to "develop ... facts for purposes of [a] Contemplated German Proceeding" that Orthogen International intends to initiate ... against Mr. Capla and Dr. [Douglas] Schottenstein in Germany...." *Id.*

7. Petitioner, Orthogen, filed a separate Application for an Order Pursuant to 28 U.S.C. § 1782 against Douglas Schottenstein, M.D. and Schottenstein Pain and Neuro, PLLC d/b/a/ NY Spine in S.D.N.Y. Case No. 1:23-mc00152-VSB. See, e.g., Reply Memorandum in Support of Objections to Subpoenas Duces Tecum [D.E. 26] at page 2 and the appended Supplemental Declaration of Dr. Stefan Kruger in in S.D.N.Y. Case No. 1:23-mc-00152-VSB at DE 26-1.

8. Douglas Schottenstein, M.D. and Schottenstein Pain and Neuro, PLLC d/b/a/ NY Spine are Plaintiffs in the case of *Schottenstein et al v. Capla et al*, 22-cv-10883-PKC (S.D.N.Y.)

wherein Edward Capla, Yolanda Capla and Orthogen are named Defendants and all of this discovery is likely to be sought if not received.

9. After the filing of *Schottenstein et al v. Capla et al*, 22-cv-10883-PKC (S.D.N.Y.), Orthogen filed an almost identical 28 U.S.C. § 1782 action against proposed Intervenor and requests the same categories of documents as requested in the instant case and seeks the deposition of Dr. Schottenstein.

10. Petitioner's applications are spawned from the Southern District of New York case and discovery should occur within the Southern District of New York (one way or another) as Petitioner commenced another identical action to this one in the Southern District of New York based upon the initial *Schottenstein et al v. Capla et al*, 22-cv-10883-PKC (S.D.N.Y.) court case. Intervenor do not oppose a Transfer to Conserve vital Judicial Resources

11. A transfer will allow outstanding issues to be resolved across multiple litigations to avoid duplicative discovery and promote preservation of party, lawyer and, most importantly, judicial time and resources in what may become inconsistent legal or factual findings without, *inter alia*, a transfer to the Southern District of New York Courts.

12. No party should suffer prejudice for the consolidation of these matters among the same exact parties to be heard under one (1) as opposed to three (3) United States District Court judges across two (2) states.

13. Intervenor thus support the previous request to consolidate/transfer these matters.

THE REST OF THIS PAGE INTENTIONALLY LEFT BLANK

14. I hereby certify that I conferred with counsel for all parties and, while they may object to a transfer or consolidation, they do not object to Douglas Schottenstein, M.D. and Schottenstein Pain and Neuro, PLLC d/b/a/ NY Spine's participation herein.

DATED AT: Central Islip, NY
November 13, 2023

/s/ Cory H. Morris /s/

THE LAW OFFICES OF CORY H. MORRIS
Cory H. Morris (CM5225)
Attorneys for Douglas Schottenstein, M.D. and
Schottenstein Pain and Neuro, PLLC d/b/a/ NY Spine
Office & P.O. Address
863 Islip Avenue
Central Islip, New York 11722
Phone: (631) 450-2515
Email : Cory.H.Morris@protonmail.com